

HOUSE BILL 502

By Rudd

AN ACT to amend Tennessee Code Annotated, Title 33,
relative to mental health treatment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 6, is amended by adding
the following new part:

**33-6-1101. "Substantial likelihood of serious harm to other persons" defined for
part.**

IF AND ONLY IF

(1) a person has threatened or attempted:

(A) homicide; or

(B) an act of mass violence toward persons or property; AND

(2) there is a substantial likelihood that the homicide or act of mass
violence will occur unless the person is placed under involuntary treatment,

THEN

(3) the person poses a "substantial likelihood of serious harm to other
persons" for purposes of this part.

33-6-1102. Eligibility for mandatory outpatient treatment by petition.

IF

(1) on the basis of a review of the person's history before and during the
period of time during which a petition filed pursuant to this part is under
consideration, the mental health court concludes that:

(A) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission,

(B) the person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a substantial likelihood of serious harm to other persons under § 33-6-1101 unless treatment occurs,

(C) the person is likely to participate in outpatient treatment with a legal obligation to do so,

(D) the person is not likely to participate in outpatient treatment unless legally obligated to do so, and

(E) mandatory outpatient treatment is a suitable less drastic alternative to inpatient commitment,

THEN

(2) the person is eligible to be subjected to an obligation to participate in any medically appropriate outpatient treatment, including, but not limited to, psychotherapy, medication, or day treatment, under a plan approved by the mental health court and the outpatient qualified mental health professional.

33-6-1103. Filing of petition with mental health court.

(a) An individual eligible under § 33-6-1105 may file a petition with a mental health court in the county where a person permanently resides, alleging that the person is eligible to be subjected to an obligation to participate in medically appropriate outpatient treatment, including, but not limited to, psychotherapy, medication, or day treatment, under a plan complying with § 33-6-1104, because:

(1) The person meets the criteria in § 33-6-1102(1)(A)-(E); and

(2) The person has, on two (2) or more separate occasions, presented a substantial likelihood of serious harm to other persons.

(b) A petition filed pursuant to this section is a statement under oath, and the petitioner is subject to perjury under § 39-16-702 for any knowingly false information contained in the petition.

33-6-1104. Hearing on petition – Outpatient treatment plan.

(a) A mental health court shall, upon receipt of a petition filed pursuant to § 33-6-1103, set the date for a hearing. The date must be no later than fourteen (14) days from the date the petition is received by the court, excluding Saturdays, Sundays, and legal holidays. Adjournments may be permitted only for good cause shown. The court shall cause the proposed patient, any other person to whom notice is due under this chapter, the petitioner, and any other persons for whom the court determines a need exists, to be advised of the date. Upon the hearing date, or upon another date to which the proceeding may be adjourned, the court shall hear testimony and, if it is deemed advisable and the proposed patient is available, examine the proposed patient in or out of court. If the proposed patient does not appear at the hearing, and appropriate attempts to elicit the attendance of the proposed patient have failed, then the court may conduct the hearing in the proposed patient's absence. In that case, the court shall set forth the factual basis for its determination to conduct the hearing in the patient's absence.

(b) If the petition for mandatory outpatient treatment submitted under § 33-6-1103 indicates that the person has not submitted to an examination in the ten (10) days prior to the filing of the petition, then the court may request the person to submit to an examination by a physician or a professional designated under § 33-6-427(a) or (b) appointed by the court. If the person does not consent and the court finds reasonable

cause to believe that the allegations in the petition are true, then the court may order law enforcement officers to take the person into custody and transport the person to a community mental health center or emergency room for examination by a physician or a professional designated under § 33-6-427(a) or (b). Transportation must be conducted in accordance with parts 4 and 9 of this chapter. The person may be detained for the period required to complete the examination but not more than forty-eight (48) hours.

(c) Upon completion of the examination, the person must be released and the examining physician or a professional designated under § 33-6-427(a) or (b) shall report the findings of the examination to the court. The court shall not hold a hearing on the petition unless and until the examining physician or a professional designated under § 33-6-427(a) or (b) submits to the court an affidavit or affirmation stating that the physician or a professional designated under § 33-6-427(a) or (b) concurs that the proposed patient is in need of mandatory outpatient mental health treatment.

(d) The court shall afford the proposed patient an opportunity to present evidence, to call witnesses on the patient's behalf, and to cross-examine adverse witnesses.

(e) The court shall consider the testimony of any law enforcement officer that is known to the court to be relevant to facts alleged in the petition.

(f) Unless the proposed patient requests a public hearing, the hearing is confidential and a report of the proceedings shall not be released by any person to the public or press.

(g) The court shall make a determination on whether the proposed patient shall be subjected to an obligation to participate in mandatory outpatient treatment under this part and shall set forth the factual basis for its determination. If the court obligates the proposed patient to participate in mandatory outpatient treatment, then the court shall

order the development and submission to the court of an outpatient treatment plan described in subsection (h).

(h)

(1) A mandatory outpatient treatment plan must contain:

(A) The rationale for each component of the plan, and whether each component is the least restrictive available alternative to serve the clinical needs of the proposed patient; and

(B) A history of the person's medication compliance.

(2)

(A) In developing the plan, the examining physician or a professional designated under § 33-6-427(a) or (b) and the outpatient qualified mental health professional shall consult with the proposed patient; the proposed patient's parents, legal custodian, or legal guardian if the proposed patient is a child; and the proposed patient's conservator, if any. Before approving the outpatient treatment plan, the examining physician or a professional designated under § 33-6-427(a) or (b) and the outpatient qualified mental health professional shall obtain the proposed patient's consent to the plan to the extent practical and shall obtain the consent of the proposed patient's parents, legal custodian, or legal guardian if the proposed patient is a child.

(B) The examining physician or a professional designated under § 33-6-427(a) or (b) shall provide a clear written statement of what the proposed patient must do to stay in compliance with the plan to the proposed patient; the proposed patient's parents, legal custodian, or legal guardian if the proposed patient is a child; the proposed patient's spouse

or other adult family member with whom the proposed patient would live; and the proposed patient's conservator, if any. If the proposed patient is a child, then the statement must specify the duties of the proposed patient's parents, legal custodian, or legal guardian.

(i) The mental health provider or facility responsible for administering the outpatient plan, or a case manager or other representative of the mental health provider or facility, shall report to the court on the person's progress at an interval deemed appropriate by the court.

33-6-1105. Persons who may file a petition under this part.

The following persons may file a petition with a mental health court to require mandatory outpatient care and treatment of a person who poses a substantial likelihood of serious harm to other persons under this part:

- (1) The parent, legal guardian, legal custodian, conservator, spouse, or a responsible relative of the person alleged to be in need of care and treatment;
- (2) A licensed physician;
- (3) A licensed psychologist who meets the requirements of § 33-6-427(a); or
- (4) An officer authorized to make arrests in this state.

33-6-1106. Amendment of outpatient treatment plan.

After a mental health court has ordered a person to be subject to mandatory outpatient mental health treatment under this part, the outpatient qualified mental health professional may change the treatment plan to meet the person's treatment needs. If the qualified mental health professional changes the treatment plan, then the person's obligation to participate in the treatment continues.

33-6-1107. Payment for outpatient services.

(a) The person is responsible for payment for the services, if:

(1) The person is not indigent;

(2) The person is eligible for payment for services under any privately funded system; or

(3) The person is eligible for payment for services under any governmentally funded system.

(b) If the person is indigent and is not eligible for payment for service under subsection (a), then the department shall provide payment for the outpatient services.

33-6-1108. Admission to treatment facility – Outpatient care suspended – Outpatient care reinstituted following release.

IF

(1) a person who is subject to the obligation to participate in outpatient treatment under this part is admitted to a hospital or treatment resource before the obligation terminates,

THEN

(2) the obligation to participate in outpatient treatment is suspended,

AND

(3) the obligation resumes on discharge unless it has been terminated under § 33-6-1116 or § 33-6-1119 or the discharge is under § 33-6-706.

33-6-1109. Failure to comply with outpatient treatment plan – Action to enforce.

IF

(1) the parent, legal guardian, conservator, spouse, responsible relative, or qualified mental health professional of a person who is subject to the obligation to participate in outpatient treatment under this part or the person who

initiated the proceeding of the person files an affidavit with the mental health court that obligated the person showing that:

(A) the person is required to be participating in outpatient treatment under § 33-6-1104,

(B) the person is, without good cause, out of compliance with the treatment plan, and

(C) the qualified mental health professional believes the noncompliance is not likely to be corrected voluntarily,

THEN

(2) the mental health court has jurisdiction to conduct original proceedings to enforce the outpatient treatment obligation, AND

(3) the mental health court may order the person to appear before the court at a stated time not later than five (5) business days after the date the order is issued to determine whether the person is required by this part to be participating in the outpatient treatment and has failed, without good cause, to participate in the treatment as required, AND

(4) the order and a copy of the affidavit must be served immediately on the person and the qualified mental health professional.

33-6-1110. Hearing to determine compliance – Findings – Order to comply – Alternative disposition upon failure or inability to comply.

(a) If the person appears in person before the court pursuant to an action taken by the court under § 33-6-1109, then the court shall hold a hearing to determine whether the person is required to be participating in outpatient treatment and is, without good cause, not complying with the treatment plan.

(b) The court shall release the person if the court determines that:

(1) The person is complying with the treatment plan; or

(2) The person is out of compliance for good cause and will be restored to compliance without further action.

(c) If the court determines that the person is out of compliance with the treatment plan without good cause and that the person can be put immediately in compliance with the treatment plan and can be expected to stay in compliance without hospitalization, then the court shall make written findings of fact and conclusions of law on the issues, order the person to comply immediately with the treatment plan, and dismiss the proceedings upon a showing that the person is in compliance.

(d)

(1) The court shall make written findings of fact and conclusions of law on the issues and order that the person be taken into custody and transported to an appropriate community mental health center or emergency room for evaluation by a physician or a professional designated under § 33-6-427(a) or (b) to determine whether the person meets the criteria for emergency hospitalization under this chapter, if the court determines that the person is out of compliance with the treatment plan without good cause and that:

(A) The person cannot be put in compliance with the treatment plan immediately; or

(B) The person cannot be expected to stay in compliance without hospitalization.

(2) The sheriff shall immediately transport the person as ordered.

(3) If the physician or professional designated under § 33-6-427(a) or (b) determines that the person meets the criteria for hospitalization under this chapter, then the physician or professional designated under § 33-6-427(a) or (b)

shall complete a certificate of need and the sheriff shall transport the person to a receiving hospital for evaluation.

(4) A physician or professional designated under § 33-6-427(a) or (b) shall evaluate the person at the receiving hospital to determine whether the person meets the criteria for emergency hospitalization under this chapter. If the physician or professional designated under § 33-6-427(a) or (b) determines that the person meets the criteria for emergency hospitalization under this chapter, then the physician or professional designated under § 33-6-427(a) or (b) shall complete the second certificate of need, and the receiving hospital shall admit the person and give notice of the commitment to the mental health court that obligated the person to mandatory outpatient treatment and to the mental health court where the hospital is located that has the same jurisdiction as the obligating mental health court, if any.

33-6-1111. Failure to appear at hearing – Custody order – Transportation to hospital – Admission – Notice to attorney or other representative.

IF

(1) the qualified mental health professional has filed an affidavit showing that:

(A) the person with mental illness or serious emotional disturbance is required to be participating in outpatient treatment,

(B) the person is, without good cause, not complying with the treatment plan, AND

(C) the qualified mental health professional believes the noncompliance is not likely to be corrected voluntarily, AND

(2) the person does not respond to the order to appear,

THEN

(3) the mental health court shall order the person taken into custody,

AND

(4) the sheriff shall immediately transport the person to an appropriate community mental health center or emergency room for evaluation by a physician or a professional designated under § 33-6-427(a) or (b) to determine whether the person meets the criteria for hospitalization under this chapter, AND

(5) if the physician or professional designated under § 33-6-427(a) or (b) determines that the person meets the criteria for hospitalization under this chapter, then the physician or professional designated under § 33-6-427(a) or (b) shall complete a certificate of need and the sheriff shall transport the person to a receiving hospital for evaluation, AND

(6) a physician or professional designated under § 33-6-427(a) or (b) shall evaluate the person at the receiving hospital to determine whether the person meets the criteria for emergency hospitalization under this chapter. If the physician or professional designated under § 33-6-427(a) or (b) determines that the person meets the criteria for emergency hospitalization under this chapter, then the physician or professional designated under § 33-6-427(a) or (b) shall complete the second certificate of need and the receiving hospital shall admit the person and give notice of the commitment to the mental health court that obligated the person to mandatory outpatient treatment, and to the mental health court where the hospital is located that has the same jurisdiction as the obligating mental health court, if any.

33-6-1112. Failure to appear where no affidavit by qualified mental health professional.

IF

(1) the qualified mental health professional has not filed an affidavit with the mental health court regarding the person with mental illness or serious emotional disturbance, AND

(2) the person does not respond to the order to appear,

THEN

(3) the mental health court shall order the person taken into custody,

AND

(4) the officer who serves the order on the person shall take the person to the qualified mental health professional or the professional's appointed substitute.

33-6-1113. Substitution of qualified mental health professional.

A person's qualified mental health professional shall appoint a qualified mental health professional as a substitute in the absence of the appointing professional.

33-6-1114. Findings by qualified mental health professional – Recommitment – Notice to representative, next of kin, and court.

IF

(1) the qualified mental health professional determines that:

(A) the person with mental illness or serious emotional disturbance is out of compliance with the treatment plan without good cause, and

(B)

(i) the person cannot be put immediately in compliance with the treatment plan, or

(ii) the person cannot be expected to stay in compliance without hospitalization, or

(iii) the person does not comply immediately with the treatment plan,

THEN

(2) the qualified mental health professional shall contact the sheriff, AND

(3) the sheriff shall immediately transport the person to an appropriate community mental health center or emergency room for evaluation by a physician or a professional designated under § 33-6-427(a) or (b) to determine whether the person meets the criteria for hospitalization under this chapter, AND

(4) if the physician or professional designated under § 33-6-427(a) or (b) determines that the person meets the criteria for hospitalization under this chapter, then the physician or professional designated under § 33-6-427(a) or (b) shall complete a certificate of need and the sheriff shall transport the person to a receiving hospital for evaluation, AND

(5) a physician or professional designated under § 33-6-427(a) or (b) shall evaluate the person at the receiving hospital to determine whether the person meets the criteria for emergency hospitalization under this chapter. If the physician or professional designated under § 33-6-427(a) or (b) determines that the person meets the criteria for emergency hospitalization under this chapter, then the physician or professional designated under § 33-6-427(a) or (b) shall complete the second certificate of need and the receiving hospital shall admit the person and give notice of the commitment to the qualified mental health professional, to the mental health court that obligated the person to mandatory

outpatient treatment, and to the mental health court where the hospital is located that has the same jurisdiction as the obligating mental health court, if any.

33-6-1115. Rights of defendant in proceedings under this part.

In judicial proceedings under this part, the person with mental illness or serious emotional disturbance has the following rights:

(1) The right to be represented by counsel during any proceeding under this part, and throughout the duration of any continuing mandatory outpatient treatment obligation;

(2) The burden of proof to establish, as appropriate to the proceedings, that the outpatient treatment plan is proper, that the person is subject to hospitalization, or that the plan is subject to extension, must be by clear, unequivocal, and convincing evidence and is borne by the party seeking to impose the obligations;

(3) The person has the right to be present at the hearing unless the person waives the right to personal presence in writing. If the person's attorney shows that the person's physical health would be endangered by being at the hearing, then the court may order a continuance until the risk is terminated. If the court determines that the person's conduct at the hearing is so violent or otherwise disruptive that it creates a serious risk of harm to the person or others at the hearing or so disrupts the proceedings that they cannot be conducted in a proper manner, then the court may order the person restrained or excluded to the extent necessary to ensure the proper conduct of the proceedings. If the person is not present at or is excluded from the hearing, then the court shall make a written fact finding as to why the hearing is held in the person's absence; and

(4) The person's attorney shall notify the court of the representation immediately after accepting it. If the person does not employ an attorney, then the court shall appoint an attorney to represent the person as soon as possible after the case is docketed. An attorney representing the person shall not serve as guardian ad litem. If the court determines that the person is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, then the court may appoint another person to serve as the person's guardian ad litem.

33-6-1116. Termination of legally mandated outpatient care – Notice to court.

IF

(1) at any time the qualified mental health professional determines that:

(A) the person with mental illness or serious emotional disturbance is likely to participate in outpatient treatment without being legally obligated to do so, or

(B) the person no longer needs treatment for the mental illness or serious emotional disturbance,

THEN

(2) the qualified mental health professional shall terminate the treatment obligation, AND

(3) the qualified mental health professional shall notify the obligating mental health court.

33-6-1117. Reinstatement of mandatory outpatient care.

IF

(1) during the six-month period after the date of implementation of the outpatient treatment plan, or during the six-month period after the last renewal of

the outpatient treatment plan, the qualified mental health professional determines that:

(A) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission,

(B) the person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a substantial likelihood of serious harm to other persons under § 33-6-1101 unless treatment is continued,

(C) the person is not likely to participate in outpatient treatment unless legally obligated to do so, AND

(D) mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(2) the obligation to participate in outpatient treatment is renewed for six (6) months, AND

(3) the qualified mental health professional shall notify the person, the person's attorney, and the obligating mental health court of the decision, the basis for the decision, and the person's right to request a hearing in the obligating mental health court.

33-6-1118. Hearing on reinstatement order.

(a) If the person files a written request for a hearing with the obligating mental health court, then within thirty (30) days after receipt of notice the obligating mental health court shall hold a hearing to review the decision of the qualified mental health professional under § 33-6-1117. IF AND ONLY IF the court determines that:

(1) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission,

(2) the person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a substantial likelihood of serious harm to other persons under § 33-6-1101 unless treatment is continued,

(3) the person is not likely to participate in outpatient treatment unless legally obligated to do so, AND

(4) mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(5) the obligation to participate in outpatient treatment is renewed for six (6) months.

(b)

(1) IF, after a hearing, the court does not determine the obligation to participate in outpatient treatment to be renewed,

(2) THEN the person is discharged from the outpatient treatment obligation.

33-6-1119. Outpatient treatment obligation limited to six (6) months.

IF

(1) a person with mental illness or serious emotional disturbance is subject to an outpatient treatment obligation under § 33-6-1104, AND

(2) the qualified mental health professional has not terminated the outpatient treatment obligation under § 33-6-1116,

THEN

(3) the person's obligation to participate in outpatient treatment terminates six (6) months after the order subjecting the person to the obligation or the last renewal of the obligation.

33-6-1120. Applicability.

This part only applies in any county that is within the jurisdiction of a designated mental health court that has the power to hear cases involving petitions filed under this title and mental commitments.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect July 1, 2021, the public welfare requiring it.